

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1293 of 1983

Date of decision: 06-08-1996

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RAGHVJIBHAI MEGHABHAI

Versus

BHAGVANJIBHAI BECHARBHAI

Appearance:

MS VASUBEN P SHAH for Petitioner
MR HR LATHIGARA for Respondent No. 1
MR Nigam Shukla for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 06/08/96

ORAL JUDGEMENT

Heard the learned counsel for the parties.

The petitioner has challenged the order of the appellate authority under which it has been decided that the petitioner is liable to pay the debt of respondent No.1. The facts of the case, briefly stated, are as follows:

The Debt Settlement Officer, under his order dated 24th October, 1979 decided to give the benefits of Gujarat Rural Debtor's Relief Act, 1976 in favour of the petitioner. Dissatisfied with the aforesaid order respondent No.1 filed appeal before the appropriate authority which has been allowed on 4-11-1980. The order of the Debt Settlement Officer giving benefits of the aforesaid Act to the petitioner has been set aside. The matter was brought before this Court by filing special civil application No.1078 of 1982. As contended by the learned counsel for the petitioner, grievance was made in the aforesaid special civil application that the appellate authority has passed the order ex parte. That contention found favour with this Court and the matter was remanded back to the appellate authority with the direction to give the petitioner opportunity of hearing. After remand the matter has been decided as aforesaid. Hence this special civil application.

2. The only contention raised by the learned counsel for the petitioner is that the appellate authority has not afforded an opportunity to the petitioner to produce village form to show that he has no land whatsoever. The counsel for the petitioner has not disputed that this prayer for filing of the document has been made before the appellate authority at the time of final hearing and not earlier to it. The appeal has been decided by the appellate authority earlier in the year 1980. But even if it was decided ex parte the fact remains that the petitioner has come to know about this on filing of earlier special civil application. Earlier special civil application was decided in the year 1982 but the petitioner has not taken steps to produce the documents before the appellate authority. The matter has been remanded by this court for giving opportunity of hearing to the petitioner. The petitioner has not availed of that opportunity.

3. Learned counsel for the respondents stated that the petitioner has not availed of the opportunity and as such he cannot blame the lower appellate authority. I find sufficient merit in the contention raised by the

learned counsel for the respondents. The petitioner has filed this special civil application in the year 1983, but even in these proceedings the petitioner has not filed the documents. Leaving apart whether this court could have permitted the petitioner to file additional evidence in proceedings under Article 226/ 227 of the Constitution of India or not, the fact remains that the documents which the petitioner wanted to produce before the authority has not been produced in the proceedings. That shows that the petitioner was not in any manner interested to produce the documents in court. He only wanted to get this as a ground for challenging the order of the appellate authority. It cannot be said in the facts of the present case that the petitioner has been denied opportunity to produce evidence in the form of village form before the appellate authority. It is a case where the opportunity given to the petitioner has not been availed by him.

4. Learned counsel for the petitioner contended that whatever land the petitioner had was transferred to the HUF prior to the appointed date. There is no evidence of transfer of the land by the petitioner. But the counsel for the respondents stated before this court that the transfer has been made by the petitioner in favour of his own minor sons. Counsel for the respondents further contended that the petitioner could not take benefit of his own action of transferring the land in favour of his minor sons, as it is not transfer but a device for the purpose denying the debts to be paid to the creditors. This is not the question to be gone into by this court for the reason that there is no evidence produced by the petitioner about transfer of possession of land.

5. No other contention has been raised by the learned counsel for the petitioner.

6. In the result this special civil application fails and the same is dismissed. Rule discharged. Ad interim relief granted earlier stands vacated. No order as to costs.

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